

## **REMARKS**

Claims 1-3, 5-10, 12, 13 and 17 are now pending in the application. Independent Claims 1 and 17 are amended. Claim 12 is cancelled. No new matter is presented. Thus, in view of the above amendment and the following remarks, Applicants respectfully request the withdrawal of the rejections.

### **REJECTIONS UNDER 35 U.S.C. § 112**

The Office Action rejected claims 1-3, 5-10, 13 and 17 under 35 U.S.C. 112, second paragraph as indefinite. Applicants have amended claims 1 and 17 to provide proper antecedent basis to the claims and respectfully request withdrawal of the rejections.

### **REJECTIONS UNDER 35 U.S.C. § 103**

Claims 1-3, 6-10, 13 and 17 are rejected under 35 U.S.C. § 103(a) as obvious over U.S. 5,593,410 to Vrespa et al. in view of U.S. 6,129,730 to Bono et al. and U.S. 7,811,312 to Stevens. Claim 5 is rejected as obvious over Vrespa, Bono, Stevens and in further view of U.S. 5,180,382 to Frigg et al. While Applicants respectfully disagree with the rejections, Applicants have amended independent Claims 1 and 17 to recite “wherein the ratio of the thread aspect ratio of the thread on the tail portion to the thread aspect ratio of the thread on the lead portion is at least about 1.2” in order to facilitate expeditious prosecution of the claims.

Applicants describe the benefits of having a particular thread aspect ratio, which is based on a relationship between the overall diameter of a bone screw and its root diameter. As noted in the originally filed specification, “It has been found that a higher thread aspect ratio for the thread on the tail portion can help to make a secure screw fixation to cancellous bone.”

Application at p. 5, lines 4-5. Accordingly, the thread aspect ratio is stated to “be at least about 1.2” in some embodiments. Id. at p. 5, line 6.

In contrast to the present application, none of the cited art recognizes any benefit to having a particular thread aspect ratio, let alone any relationship between the overall diameter of the bone screw and its root diameter. Accordingly, it would not have been obvious to modify the bone screws in the cited art to have a particular thread aspect ratio.

Applicants respectfully disagree that it would have been obvious to modify the cited art to include a particular thread aspect ratio based on the notion that “it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art.” Office Action at p. 6. First, as indicated above, there is no recognition in any of the cited art of the benefits of providing a particular thread aspect ratio. Second, the Office Action does not state how one would even go about discovering the “optimum value” of a thread aspect ratio since the cited art does not even recognize the benefits of having a particular thread aspect ratio. See M.P.E.P. 2144.05, section II.B, entitled “Only Result-Effective Variables Can Be Optimized” (“A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable . . .”)(emphasis added). The rejections do not identify how the recited thread aspect ratio is “result-effective” and how one skilled in the art would even go about determining the “optimum ratio” when none of the cited art even addresses this feature.

Accordingly, for the above-mentioned reasons, independent claims 1 and 17 are in condition for allowance.

As Claims 2, 3, 5-10 and 13 depend from Claim 1, Applicants respectfully request the Examiner to reconsider and withdraw the rejections of Claims 2, 3, 5-10 and 13.

### **No Disclaimers or Disavowals**

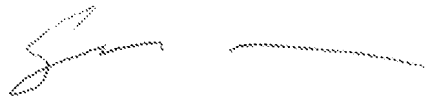
Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

### **CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned attorney at (610) 930-1800 x1172. No additional fees are believed due for this submission, however, if any additional fees are required; please charge such fees to Globus Medical Deposit Account No. 50-4131.

Respectfully submitted,



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